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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEE SIMON

Appeal 2009-003908
Application 10/534,550
Technology Center 3600

Decided: 18 December 2009

Before RICHARD E. SCHAFER, SALLY GARDNER LANE, and SALLY C. MEDLEY, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* SALLY C. MEDLEY.

Opinion Concurring in part and Dissenting in part filed by *Administrative Patent Judge* RICHARD E. SCHAFER.

MEDLEY, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

Lee Simon ("Simon"), the real party in interest, seeks review under 35 U.S.C. § 134(a) of a Final Rejection of claims 1-5, 12, 21 and 24-33. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

References Relied on by the Examiner

Wilkinson	3,858,091	Dec. 31, 1974
Alden et al. ("Alden")	5,572,984	Nov. 12, 1996
Vent Master Modular Distribution System ("MDS")[1]		

Rejections on Appeal

The Examiner rejected claims 1-5, 12, 21 and 24-33 as unpatentable under 35 U.S.C. § 103(a) over Alden, Wilkinson and MDS.

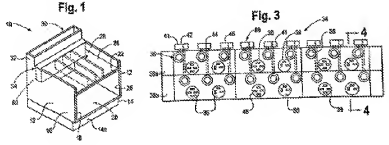
Simon argues separately several different groups of claims, which shall become apparent in the analysis.

The Invention

Simon discloses, referring to figures 1 and 3 below [numbers from figures 1 and 3 inserted], a modular appliance receptacle having a frame [10] and a utility chassis [34] that includes a plurality of clusters [38a], [38b] each with different types of utility connectors [36] identically positioned within each of the clusters. Spec. 7-8.

[1] A date was not provided for the MDS reference in the Information Disclosure Statement filed 27 December 2006. The "date" of MDS is not an issue in the case.

Simon's figures 1 and 3 are reproduced below.



Figures 1 and 3 depict a modular appliance receptacle and a utility chassis.

Claim 1, reproduced from the Claims Appendix of the Appeal Brief, reads as follows:

> A modular reconfigurable appliance receptacle comprising: a frame configured to define an enclosure suited to accommodate and removably hold at least one of a plurality of appliance units; a utility chassis configured and arranged within the frame; the utility chassis including a plurality of clusters each with different types of connectors suited to provide access to utilities, the different types of connectors being in relative positions within associated ones of the clusters in a manner that is identical for each of the clusters, at least one of the connectors of one of the clusters being arranged to enable connection of the at least one of the appliance units with at least one of the utilities.

(App. Br. 21, Claims App'x.)

B. ISSUES

Has Simon shown that the Examiner incorrectly found that the combination of prior art describes: (1) a utility chassis including a plurality of clusters each with different types of utility connectors in identical relative positions within each of the clusters; (2) a frame configured and arranged to connect to an adjacent frame; (3) a utility chassis positioned to support flow through of the utilities to or from an adjacent frame; (4) a utility chassis configured to provide access to electric, gas, water, drainage, steam,

vacuum, air, or communication based utilities or any combination thereof; (5) a modular reconfigurable appliance receptacle including covers and a frame and appliance unit including means to removably attach the covers thereto; (6) a plurality of appliance units configured to access different ones of the utilities from that of each other to operate; and (7) an appliance unit accessing a plurality of utilities simultaneously via one of the clusters?

C. FINDINGS OF FACT

Alden

1. Alden describes, referring to Alden's figure 1 reproduced below [numbers from figure 1 inserted], a kiosk module [10] forming a box which houses a chassis [26] including an upper portion [18], a lower potion [28] and a central portion [34]. Col. 2, l. 41-col. 3, l. 2.

Alden's figure 1 is below:

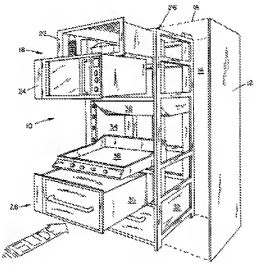


Figure 1 depicts a kiosk module.

2. Upper chassis portion [18] slidably receives one or more of a convection, steam or microwave oven [24]. Col. 1, ll. 63-65; col. 2, ll. 46-52.

3. Central chassis portion [34] slidably receives an electric or gas griddle, or a gas grill. Col. 2, l. 60-col. 3, l. 2.
4. Lower chassis portion [28] also can slidably receive an oven [24]. Col. 2, ll. 53-58.
5. The chassis [26] has connections for gas, electricity and water for the appliances. Col. 3, ll. 44-49.
6. Alden depicts the kiosk module [10] connected to other kiosk modules. Fig. 3.
7. Alden does not describe the specific structure of the gas, electric and water connections on or within the chassis [26].
8. Alden, in particular, does not describe a cluster of connectors at each of the chassis portions [18], [28] and [34].

Wilkinson

9. Wilkinson describes, referring to Wilkinson's figure 1 [numbers from figure 1 inserted], a plug-in modular appliance unit system including a mount [30] that receives one of a plurality of available plug-in appliances. Abs.; col. 3, ll. 1-16.

Wilkinson's figure 1 is reproduced below:

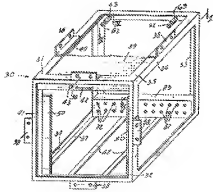


Figure 1 depicts Wilkinson's mount.

10. The mount [30] is basic to all of the modular plug-in appliances. Col. 10, l. 63.
11. The rear portion of the mount [30] includes a jack bar [83] with a plurality of jack sockets [82] for effecting selective electrical connections. Col. 1, ll. 61-63; col. 5, ll. 31-36.
12. In order to accommodate numerous different electrical connections of various modular appliance units that may be optionally accommodated in the mount [30] through the same jack bar, the jack bar [83] is provided with a suitable multiplicity of jack sockets [82] with respective terminals [84]. Col. 5, ll. 42-48
13. The respective terminals [84] are adapted to be connected in selected circuit with desired electrical devices (e.g., an antenna) in addition to the basic energy and ground connections. Col. 5, ll. 48-51; col. 7, ll. 42-54; col. 8, ll. 2-4.
14. The plug-in modular appliance unit system allows any preferred appliance module to be received in a selectively releasable manner enabling the appliance module to be carried in the mount indefinitely but permitting quick release and removal of the appliance module to permit reception of a different appliance module in the mount. Col. 2, ll. 61-68.
15. The plug-in modular appliance system enables different appliances to be selectively employed at any one location without a major installation effort for each appliance in addition to a major removal effort for any appliance already at that location. Col. 1, ll. 4-7, 14-18.

D. PRINCIPLES OF LAW

"[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *KSR Int'l Co, v. Teleflex Inc.*, 550 US 398, 417 (2007).

E. ANALYSIS

Claims 1-2, 5, 21 and 25-30

Independent claim 1 is representative and recites (disputed limitations in *italics*): "a utility chassis . . . within the frame . . . including *a plurality of clusters each with different types of connectors* suited to provide access to utilities . . . *in relative positions within associated ones of the clusters in a manner that is identical for each of the clusters* . . . ." App. Br. Claims App'x. 21.

Simon argues that the combination of Alden, Wilkinson and MDS does not describe the disputed limitations. Br. 13-15, 19.

Alden describes a kiosk module [10] housing a chassis [26] including an upper portion [18], a lower potion [28], and a central portion [34], each of which slidably receives appliances such as a convection oven, steam oven, microwave oven [24], electric griddle, gas griddle or gas grill. Col. 2, l. 46-col. 3, l. 2. The chassis [26] has connections for gas, electricity and water for the appliances. Col. 3, ll. 44-49. However, Alden does not describe the specific structure of the gas, electric and water connections on the chassis [26]. Specifically, Alden does not describe a cluster of connectors at each of the chassis portions [18], [28] and [34].

Wilkinson describes a plug-in modular appliance unit system including a mount [30] for receiving one of a plurality of available plug-in appliances. Abs.; col. 3, ll. 1-16. The mount [30] is basic to all of the modular plug-in appliances. Col. 10, l. 63. The rear portion of the mount [30] includes a jack bar [83] with a plurality of jack sockets [82] for effecting selective electrical connections. Col. 1, ll. 61-63; col. 5, ll. 31-36. In order to accommodate numerous different electrical connections of various modular appliance units that may be optionally accommodated in the mount [30] through the same jack bar, the jack bar [83] is provided with a suitable multiplicity of jack sockets [82] with respective terminals [84]. Col. 5, ll. 42-48. The respective terminals [84] are adapted to be connected in selected circuit with desired electrical devices (e.g., an antenna) in addition to the basic energy and ground connections. Col. 5, ll. 48-51; col. 7, ll. 42-54; col. 8, ll. 2-4. Wilkinson's plug-in modular appliance unit system allows any preferred appliance module to be received in a selectively releasable manner enabling the appliance module to be carried in the mount indefinitely but permitting quick release and removal of the appliance module to permit reception of a different appliance module in the mount. Col. 2, ll. 61-68. The system further enables different appliances to be selectively employed at any one location without a major installation effort in addition to a major removal effort. Col. 1, ll. 4-7, 14-18.

At the time the invention was made, one with ordinary skill in the art would have appreciated that Wilkinson's mount with a socket bar for effecting selective connections for different appliances would have been advantageous in a system such as Alden's. One with ordinary skill would have known how to modify each of the upper [18], lower [28], and central

[34] portions of Alden's chassis [26] to include a socket bar like Wilkinson's socket bar and to include gas, water and electrical connections in each socket bar in order to effect selective connections with each of the appliances placed in each chassis [26] portion without a major installation or removal effort for each of the appliances to be installed. Doing so would have been obvious since providing each chassis [26] portion with identical socket bars each having an identical arrangement of gas, water and electrical connections would have facilitated the interchangeability of different appliances within each of the different portions of the chassis [26].

Simon argues that the combination of Alden and Wilkinson would result in fitting Alden's cabinet with Wilkinson's jack bar [83] to provide electrical service. Br. 16. Simon further argues that the combination of applied references would require skilled tradespersons to customize utility services other than electrical connections to suit the individual needs of appliance units that are interchanged. Br. 16.

Simon's arguments are misplaced. The combination of applied references does not result in the bodily incorporation of Wilkinson's "electrical service" jack bar [83] in Alden's kiosk module [10]. Rather, the combination of applied references results in providing identical socket bars with water, electric and gas connections in each of chassis portions [18], [28] and [34] that receive appliances. Contrary to Simon's argument, customizing utility services other than electrical connections to suit the individual needs of the appliance units would not be required because, as taught by Wilkinson, the connections are already provided. Alden suggests providing the desired services, (i.e., water, electric, and gas), in each of the chassis portions that receives appliances to enable different appliance

modules to be placed in any of the upper, lower and central portions [18], [28] and [34] of the chassis [26]. Alden Col. 2, ll. 61-68.

For all these reasons, Simon has not shown that the Examiner erred in determining that claims 1-2, 5, 21 and 25-30 would have been obvious over Alden, Wilkinson and MDS.

Claims 3 and 4

Simon argues that Alden does not describe any connection between adjacent frames or describe sharing a common utility chassis. Br. 19

Simon's argument is unpersuasive because Alden describes the kiosk module [10] is connected to another kiosk module. Fig. 3. Simon's argument that Alden does not describe adjacent frames that share a common utility chassis is not commensurate in scope with the claim limitations since claims 3 and 4 do not require sharing of a common utility chassis. Rather, claims 3 and 4 recite: "the frame is configured and arranged to connect to another frame adjacent thereto" and "the utility chassis is positioned to support flow through of the utilities to or from the adjacent frame." Br. 21, Claims App'x. Contrary to Simon's assertions, the limitations of claims 3 and 4 do not require adjacent frames to share a utility chassis. The requirement that the utility chassis (of the first frame) allows flow through of utilities from an adjacent frame, for example, does not require a single utility chassis that is used by the appliances held in both frames. The utility chassis of the combination would have had socket bars with water, electric and gas connections. Simon has not demonstrated that such a structure would not support the flow through of utilities from an adjacent frame.

For these reasons in addition to those discussed before for claim 1, Simon has not shown that the Examiner erred in determining that claims 3 and 4 would have been obvious over Alden, Wilkinson and MDS.

Claim 12

Simon argues that neither Alden nor Wilkinson describe a utility chassis that contains different kinds of utility service connections. Br. 19-20. Simon's argument is not commensurate in scope with the claim limitations since claim 12 does not require a utility chassis with *different kinds* of utility connections. Rather, claim 12 recites: "the utility chassis is configured to *provide access to utilities selected from the group consisting of* electric, gas, water, drainage, steam, vacuum, air, communication based utilities and any combination thereof." Br. 22, Claims App'x. Nonetheless, the combination of applied references, as already explained, results in identical socket bars provided in each chassis [26] portion, i.e., [18], [28] and [34], each socket bar including gas, electric and water connections that can provide access to utilities selected from the group claimed.

For these reasons in addition to those discussed before for claim 1, Simon has not shown that the Examiner erred in determining that claim 12 would have been obvious over Alden, Wilkinson and MDS.

Claim 24

Claim 24 is ultimately dependent on claim 1 and recites: "[t]he modular reconfigurable appliance receptacle . . . including covers . . . the frame and appliance unit include means to removably attach the covers thereto . . . ." Br. 22, Claims App'x

Simon argues that the applied references do not describe removable appliance covers. Br. 20.

The Examiner finds that Alden describes decorative covers removably attached to the frame and appliance units. Final Rejection 3-4; Ans. 3-4. The Examiner identifies Alden's vertical side walls [12] as corresponding to a removable appliance cover. Ans. 8. The Examiner takes official notice in finding that it is well known in the art to provide a cabinet frame with a decorative cover removably attached thereto for aesthetic purposes. Final Rejection 5; Ans. 5, 8.

Notwithstanding the official notice, the Examiner does not direct us to, and we can not find, where Alden or the combination of applied references describe covers removably attached to the *appliance units*. The Examiner has not accounted for the limitation that both the frame *and* the appliance unit include means to removably attach the covers. Specifically, the appliance units, e.g., the appliances that are inserted into the frame of Alden do not include any structure for removably attaching the covers, e.g., side walls [12]. Moreover, the Examiner's statement of "official notice" only addresses that it is well known to "provide a cabinet frame with a decorative cover removably attached thereto for aesthetic purpose." Ans. 5. The Examiner has not accounted for the language of the claim that the appliance unit, e.g., the appliance that is inserted into the Alden frame, also includes "means to removably attach the covers thereto."

For these reasons, the Examiner erred in determining that claim 24 would have been obvious over Alden, Wilkinson and MDS.

Claims 31 and 32

Simon argues that the applied references do not describe interchanging appliances within a frame to access different kinds of utilities other than those utilities that were previously available to the previously

installed appliance. Br. 20. Simon's arguments are not commensurate in scope with the claim limitations since claims 31 and 32 do not require interchanging appliances to access different utilities from those used by the previous appliance. Rather, claim 31 recites "a plurality of appliance units within different ones of the bays, each of the appliance units being configured to be operational if moved into any of the bays by accessing appropriate ones of the utilities via the clusters associated with . . . the bays. . . ." Claim 32 instead recites: "the appliance units are configured to access different ones of the utilities from that of each other to operate." Br. 24, Claims App'x. As already explained, the combination results in identical socket bars having different utility connections provided at each of the portions of the chassis at [18], [28] and [34]. The different connections facilitate interchangeability of different appliances in any of the portions [18], [28] and [34].

For these reasons, in addition to those discussed before for claim 1, Simon has not shown that the Examiner erred in determining that claims 31 and 32 would have been obvious over Alden, Wilkinson and MDS.

Claim 33

Claim 33 is ultimately dependent on claim 1 and further recites: "the appliance unit accesses a plurality of utilities simultaneously via one of the clusters. Br. 23, Claims App'x.

Simon argues that the applied references do not describe an appliance accessing multiple utilities simultaneously from a utility chassis that is within a frame having an enclosure that is accommodating the appliance. Br. 20.

As explained before, the combination of the applied references describe that the upper, lower and central portions [18], [28] and [34] of chassis [26] each include identical socket bars with electric, gas and water connections. Alden describes the use of a steam oven in one of the chassis [26] portions. Col. 1, ll. 63-65; col. 2, ll. 53-58. Employing a steam oven in one of the chassis [26] portions would require accessing multiple utilities provided on the socket bar simultaneously; water and either electric or gas to heat the water.

For these reasons in addition to those discussed before for claim 1, Simon has not shown that the Examiner erred in determining that claim 33 would have been obvious over Alden, Wilkinson and MDS.

F. CONCLUSION

Simon has not shown that the Examiner incorrectly found that the combination of prior art describes: (1) a utility chassis including a plurality of clusters each with different types of utility connectors in identical relative positions within each of the clusters; (2) a frame configured and arranged to connect to an adjacent frame; (3) a utility chassis positioned to support flow through of the utilities to or from an adjacent frame; (4) a utility chassis configured to provide access to electric, gas, water, drainage, steam, vacuum, air, or communication based utilities or any combination thereof; (5) a plurality of appliance units configured to access different ones of the utilities from that of each other to operate; and (6) an appliance unit accessing a plurality of utilities simultaneously via one of the clusters.

The Examiner incorrectly found that the combination of prior art describes a modular reconfigurable appliance receptacle including covers

and a frame and appliance unit including means to removably attach the covers thereto.

G. ORDER

The decision of the Examiner rejecting claims 1-5, 12, 21 and 24-33 as unpatentable under 35 U.S.C. § 103(a) over Alden, Wilkinson and MDS is affirmed.

The decision of the Examiner rejecting claim 24 as unpatentable under 35 U.S.C. § 103(a) over Alden, Wilkinson and MDS is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

SCHAFER, *Administrative Patent Judge,* concurring in part and dissenting in part.

I join with my colleagues opinion except for the portion reversing the rejection of Claim 24. This claim additionally requires appliance covers and means to removably attach the covers. The examiner found that Alden's vertical sidewall 12 was a cover. Alden's Figures 1 and 2 appears to show that the sidewall 12 is removable and covers the chassis 26 and the appliances held by the chassis. Since the obviousness of the limitation is not otherwise challenged, I would affirm the rejection of this claim.

The examiner also took official notice that it was well known in the art to provide a decorative cover removably attached to a cabinet frame for aesthetic purposes. Appellant has not challenged the correctness of the examiner's holding on the level of skill in the art. In my view merely asserting that the cited references do not describe the feature does not

challenge the correctness of the examiner's statement on the level of skill in the art. If the examiner is incorrect or the inventors can not confirm or deny the correctness of the fact, then they should expressly challenge the correctness of the officially noticed fact. On the other hand if Appellant knows that the fact officially noticed is correct, the Appellant is obligated to accept it as fact in the obviousness determination. Since the examiner's holding - that the use of decorative covers is well known to the person of ordinary skill in the art - is unchallenged, I see no reason to set aside his conclusion that the subject matter of Claim 24 would have been obvious.

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